Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

RECOMMENDED DECISION

Comments of the Montana Telecommunications Association

June 6, 2007

I. Introduction

The Montana Telecommunications Association ("MTA") comprises small and large, shareholder-owned (commercial) and member-owned (cooperative) rural telecommunications providers serving consumers throughout the state of Montana. On *average*, these rural local exchange carriers ("RLECs") serve fewer than three access lines per mile. Yet, they have deployed state-of-the-art broadband capabilities to the edges of their networks—usually offering megabit bandwidth capacity to ninety-five percent of their customers or more. Montana's RLECs provide broadband service to over 250 communities throughout the state, often with populations of only a few hundred. Several of these RLECs have formed a consortium which provides redundant fiber backbone service throughout the state, and manages nearly 150 videoconference sites providing efficient and reliable distance learning and telemedicine applications, which link rural health care and education resources in remote parts of the state with medical centers and educational institutions in larger population centers. Montana's RLECs also provide the State of Montana with advanced, redundant, IP-capable E-911 service. These rural independent telcos continue to invest in advanced telecommunications network infrastructure and services; and they're taking the "next step" in technology/service deployment by deploying fiber to the home, and gigabit Ethernet backbones. Soon many of these companies will be offering advanced "triple play" services, bringing voice, data and video services to Montana's rural communities.

MTA's member companies exemplify what is right about universal service. *Without* universal service, it is doubtful that these companies could provide affordable, reliable, comparable or quality telecom service to Montana's rural consumers. Without universal service, affordable access to essential telephone service would be threatened. Rates in Montana could rise by $300 to more than $600 annually for Montana's rural telecommunications consumers. And almost certainly, without universal service Montana's RLECs could not provide advanced telecommunications services as envisioned by the Telecommunications Act of 1996.[1]

With universal service, on the other hand, Montana's RLECs invest continuously in advanced telecommunications capabilities which increasingly form the foundation of Montana's economic development potential. Today in Montana a Cisco software engineer can live in Canyon Creek, MT, and write programs for her clients anywhere in the nation, and beyond. A graphic designer from Los Angeles can spend a summer teaching theater in Virginia City, MT, and continue to serve his business clients remotely. An international political data company can locate in Philipsburg, MT, and have the bandwidth necessary to host millions of hits from citizens and media from across the globe. The Bank of America, or Hotwire.com can locate major data centers in Montana, offering the companies with the benefits of redundancy and security and offering job opportunities for Montanans.

None of these opportunities would be possible without the substantial investment of resources committed by Montana's independent rural telecommunications providers.

[1] 47 U.S.C. 254 (b).

II. MTA Urges Immediate Implementation of the Joint Board's Recommended Decision

Universal service is an essential ingredient in enabling Montana's RLECs to meet their commitment to the deployment of advanced telecommunications services for Montana's rural, high-cost consumers. In light of the importance of preserving and promoting the role of universal service in supporting economic development in rural America, MTA strongly recommends that the Commission immediately adopt the Joint Board's Recommended Decision ("Recommended Decision") to establish "an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive for each state."[2] MTA shares the concerns of the Joint Board that "without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable."[3]

It is important to note that the Recommended Decision is the result of a consensus of key policy leaders representing federal and state regulators and consumer advocates, embracing a diversity of demographic, regional, and policy perspectives. The near-unanimity of support among Joint Board members and their sense of urgency in proposing the Recommended Decision cannot be overlooked.

III. Immediate Action Is Necessary; High-Cost Fund Growth Is Unsustainable and Threatens the Universal Program's Future Viability

As noted in the Recommended Decision, the most recent universal service contribution factor (2Q07) is 11.7%, the highest it's been since its inception.[4] The ballooning growth of the universal service fund is well known by now. Since 2001, high-cost universal service support has grown from $2.6 billion to about $4 billion. This growth is attributable to two factors: "Increases since 2003 represent additional resources being devoted to rural telecommunications,

[2] *Federal-State Joint Board on Universal Service*. WC Docket No. 05-337, CC Docket 96-45. Recommended Decision. FCC 07-J1. (rel. May 1, 2007) ("Recommended Decision") p. 1.
[3] *Ibid.* p. 3.
[4] *Ibid*. fn. 11.

mainly to support cell phone companies that are new competitive entrants to rural markets. Earlier increases in spending were essentially accounting changes mandated by the Telecommunications Act of 1996"[5] that required implicit subsidies in access charges to be made explicit in universal service.

Virtually all of the "new growth" (i.e., not attributable to "accounting changes mandated by the Telecommunications Act") is attributable to exponential growth in designation of competitive eligible telecommunications carriers (CETCs), 94% of which are wireless carriers.[6] As the Recommended Decision points out, "While support to incumbent LECs has been flat or even declined since 2003, by contrast, in the six years from 2001 through 2006, competitive ETC support grew from $15 million to almost $1 billion—an annual growth rate of over 100 percent…High-cost support to competitive ETCs is estimated to grow to…$2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009."[7]

Further delay in implementing the Joint Board's Recommended Decision threatens to implode the entire universal service program, to the detriment not only of RLECs but wireless carriers and any other competitive telecommunications providers whose services depend on a reliable, quality network infrastructure supported at least in part by universal service.

IV. The "Identical Support" Rule Exacerbates the Ballooning of High-Cost Funding and Must Be Eliminated

The dramatic growth in designations of additional CETCs has led to the ballooning of universal service support. Not only has total support for CETCs skyrocketed in recent years—threatening the viability of universal service itself—but the "identical support" rule potentially inflates the amount of high-cost support

[5] Statement of Donald B. Marron, Acting Director. Congressional Budget Office. "Potential Future Spending from the Universal Service Fund." Before the Subcommittee on Telecommunications and the Internet. Committee on Energy and Commerce. U.S. House of Representatives. June 21, 2006. ("CBO") p. 2.
[6] CBO. "Funding for those carriers accounts for about 94 percent of the increase in spending by the High-Cost Program since 2003. p. 6.
[7] Recommended Decision. p. 3.

CETCs receive. "In recent years, this growth [of universal service support] has been due to increased support provided to competitive ETCs which receive high cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETC's own costs."[8] Since CETCs do not account for their costs under the "identical support" rule, there remains a largely uncontested claim that CETCs reap a windfall from universal service support.[9] In other words, not only is the amount of support received by CETCs ballooning, but there is reason to believe that such support each CETC receives is well beyond what any CETC actually needs.[10]

While the Recommended Decision focuses on an immediate, emergency cap in the amount of high-cost support received by CETCs, the identical support rule is directly relevant to the hemorrhaging of the universal service fund; and, thus, the need to staunch the growth of the fund while long term solutions are developed.

FCC Chairman Kevin Martin noted the effect of identical support on universal service in a recent letter to House Telecommunications Subcommittee Chairman Ed Markey:

> I believe we need to limit the ability of rural consumers to receive support for multiple phones as well. Indeed, I agree that the current Commission policies result in 'the subsidies generated by the

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[8] *Ibid*.

[9] See Reply Comments of the Montana Public Service Commission. In the Matter of the Federal-State Joint Board on Universal Service, Request for Comments on Certain of the Commission's Rules Relating to High-cost Universal Service Support. CC Docket No. 96-45. December 14, 2004. "To further illustrate the need to eliminate the identical support rule we offer the following information. Western Wireless' CEO, John Stanton, in his presentation to this fall's Qwest Regional Oversight Committee (ROC) meeting of September 12 and 13, [2004] Missoula, Montana, presented estimates of relative wireline and wireless investment costs. Those costs are as follows: (1) national wireline carriers' cost is $2,492; (2) national wireless carriers' cost is $920; (3) rural wireline carriers' cost is $7,195; and (4) rural wireless carriers' cost is $1,734. <u>It is apparent from the presentation that to base support to wireless carriers upon the cost of the ILEC would bequeath an extraordinary subsidy to the wireless industry</u>." [Emphasis added.]

[10] MTA notes that the identical support windfall is further exaggerated by the fact that wireless carriers receive support for each handset in a household, while incumbents receive support on a per-line basis. As AT&T notes in a March 22, 2007 ex parte (see fn. 14, below), "consumers are in many cases footing the bill to subsidize three or even four wireless ETC lines in the same household…. [O]ver 13% of supported wireless CETC lines are in households that have at least three such lines, and over 8% are in households with *four* such lines." This phenomenon further inflates the amount of support received by CETCs, and contributes to unnecessary and excessive growth in the high cost fund.

> Commission's universal service rules now support[ing] multiple wireless networks providing services that for many consumers are effectively a complement, not a substitute, to the service already offered by the subsidized wireline incumbent local exchange carrier.'…I am concerned about the Commission's policy of using universal service support as a means of creating government-managed 'competition' for phone service in high-cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. Such a policy could also make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.[11]

The identical support rule further includes support for "accounting changes mandated by the Telecommunications Act of 1996" as CBO notes. Identical support

> means that wireless entrants receive payments from the USF that were originally designed to compensate incumbents for reducing their long-distance access rates during a period before most new entrants had entered the market. Careful design of USF payments to partly replace lost intercarrier compensation could result in a reduced flow of resources to competitive entrants, on net. That change would require at least partly decoupling the support given to incumbents from the support given to competitive entrants.[12]

As the Joint Board points out, "The identical support rule seems to be one of the primary causes of the explosive growth in the [high-cost] fund," a conclusion that leads the Joint Board to recommend "that the Commission consider abandoning or modifying this rule in any comprehensive reform it ultimately adopts [and] expressly place competitive ETCs on notice that identical support without cost justification may be an outdated approach to USF funding."[13]

[11] Chairman Martin's response to Chairman Markey is not dated, but appears to have been issued around May 14, 2007.
[12] CBO. p. 11.
[13] Recommended Decision. p. 6.

MTA is encouraged by the reference to the "identical support" rule in the recommended Decision, and strongly supports the Joint Board's recommendation to abandon this rule.[14]

V. The Recommended Decision Promotes Competitive, Technological and Regulatory Neutrality

Opponents somehow argue that the Recommended Decision violates the Commission's principle of competitive neutrality. On the contrary, the Recommended Decision makes significant progress toward reducing regulatory and competitive disparities that exist between incumbent RLECs and CETCs. The Recommended Decision promotes—not violates—competitive neutrality.

As the Recommended Decision notes,

> "[f]undamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs. For example, competitive ETCs, unlike incumbent LECs, have no equal access obligations. Competitive ETCs also are not subject to rate regulation. In addition, competitive ETCs may not have the same carrier of last resort obligations that incumbent LECs have. Furthermore, under the identical support rule, both incumbent rural LECs and competitive ETCs receive support based on the incumbent rural LECs' costs. Therefore, incumbent rural LECs' support is cost-based, while competitive ETCs' support is not.[15]

In addition to the regulatory disparities that exist between incumbent rural LECs and CETCs, there is a number of variances in regulatory treatment among wireless and wireline carriers, regardless of their ETC status. Since the overwhelming majority of CETCs comprises wireless carriers, these wireless/wireline regulatory disparities transfer into further inconsistencies with the Commission's principle of competitive neutrality as it applies to incumbent rural LECs and CETCs.

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[14] See also: In the Matter of Federal-State Joint Board on Universal Service, High Cost Universal Service Support, WC Docket No. 05-337; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45. Ex Parte by AT&T. March 22, 2007. AT&T proposes an immediate freeze on new ETC designations, rather than a cap as the Joint Board recommends. Importantly, the AT&T proposal also recommends reducing the amount of frozen support by an amount which accounts for access charges inherent in identical support which CETCs should not receive in the first place. ("AT&T ex parte")

[15] *Ibid*. p. 4.

Moreover, the identical support rule, as noted above, violates the principle of competitive neutrality. CETC support is based on incumbent LECs' costs, not their own, leading to potential windfalls garnered by CETCs at the expense of the universal service fund and creating uneconomic competitive advantages. The identical support that CETCs receive includes access "payments from the USF that were originally designed to compensate incumbents for reducing their long-distance access rates during a period before most new entrants had entered the market."[16] And, wireless CETCs receive support for each handset in a household. Universal service today is funding multiple carriers and multiple "lines" in many cases.

The Recommended Decision mitigates some—not all—of these regulatory and competitive disparities among incumbent rural LECs and CETCs. Primarily, <u>universal service support is already capped for incumbent rural LECs</u>. A cap is nothing new to universal service. The funding received by traditional landline phone companies (LECs) has been capped for years. LECs have learned to cut costs and gain efficiencies under the present caps. Since support already is capped for LECs, competitive neutrality is achieved with the Recommended Decision by establishing a cap on CETC high-cost support. In other words, the Recommended Decision proposes to eliminate one form regulatory disparity between incumbent rural LECs and CETCs by imposing a cap on both types of carrier (rather than capping only the incumbent LECs today).

The Recommended Decision ensures that money received by CETCs today will continue to flow to states; it just will not grow. (Note: support for incumbent rural LECs has remained flat or even declined for years.) No CETCs will be harmed and no CETCs will lose support. Under the Recommended Decision, CETCs will continue to receive an "identical support" windfall without any accounting for their own costs.[17]

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[16] CBO. *op cit*. See also AT&T *ex parte*.

[17] Unlike the Recommended Decision, AT&T's March 22 *ex parte*, proposes to *reduce* the amount of support provided to CETCs by $200 million to account for the portion of identical support which includes the effect of access charge reform on incumbent, but not competitive, ETCs. "[It is]

VI. Opponents Need to Embrace Interim and Long-term Reform

Opponents of the Recommended Decision effectively are attempting to preserve the status quo, which is broken and is leading to a hemorrhaging of the very universal service fund which supports investment in both rural wireline and wireless—rural incumbent LEC and CETC—networks. By ignoring necessary reforms to the universal service program, opponents' actions threaten the entire universal service program's sustainability. If opponents' claims prevail, and the Recommended Decision is rejected, the long-term repercussion may be that all telecom providers, incumbent and competitive, wireline and wireless, will lose universal service support.

Some wireless carriers further argue that the Recommended Decision threatens buildout of Phase I and Phase II E-911 emergency services. However, as noted earlier, CETCs will continue to receive universal service under the Recommended Decision. Further, MTA notes that the 2007 Montana Legislature passed legislation (HB 27) which increases the 911 fee on wireless and wireline consumers' bills from $0.50 to $1.00, for purposes of providing wireless carrier cost recovery for deploying Phase I and Phase II emergency 911 service. This legislation is similar to wireless 911 cost recovery legislation passed in most states. In other words, consumers are paying an additional $0.50 in Montana for wireless 911 deployment, and nearly 12% separately on their bills to fund an ever-growing universal service fund, the growth of which is entirely the result of CETCs' universal service receipts. It's time CETCs become part of the solution instead of the problem.

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indefensible that wireless ETCs are permitted to share in those discrete portions of universal service high-cost funding that are *specifically designed to replace access charges that have been eliminated.* Carriers that have suffered no harm from the commission's access charge reform should not reap a universal service windfall from the relief specifically designed to minimize the impact of such reform." The Joint Board's recommendation to cap support at existing levels includes the $200 million in access charge embodied in the identical support received by wireless carriers.

Opponents claim that the Recommended Decision will hamper investment in rural networks. As noted above, the Recommended Decision does not withdraw any support from rural network investment. It merely caps support at 2006 levels. A cap is nothing new to universal service.

The opponents' claims actually mask a more selfish motive: CETCs want to keep the floodgates open, to keep the gravy train rolling. In a short-sighted zeal to squeeze more money out of universal service today, opponents, if successful in preventing adoption of the Recommended Decision, may succeed in threatening the viability of universal service in the foreseeable future.

Opponents should embrace a "time out" presented by the Recommended Decision, and further welcome efforts to reform universal service in ways that will preserve the value of the program for years to come for all Americans living in hard-to-serve high-cost areas.

VII. An Interim Solution Is Necessary while Long Term Solution Is Developed

The Recommended Decision is an interim proposal only. The Joint Board emphasizes that the interim "cap will expire one year from the date of any Joint Board recommended decision on comprehensive and fundamental universal service reform. [The Joint Board further] commit[s] to adoption of a further recommended decision addressing fundamental high cost reforms within six months of today's Recommended Decision" (i.e., May 1, 2007).[18] In short, the Recommended Decision is timed to expire in 18 months, during which time the FCC will establish long term solutions to universal service. Moreover, on the same day as the Recommended Decision was released, the Joint Board issued a notice for comment on long term solutions including reverse auctions, elimination of identical support, and other regulatory reform concepts. (MTA, joined by the Oregon and Washington telecommunications associations, filed Comments in response to this notice on May 31, 2007.)

[18] *Ibid*. p. 5.

VIII. Conclusion

Consumers today are bearing the cost of the growth of universal service support. Because the funding for the universal service fund comes from fees that consumers pay on their phone service, the Joint Board's recommendation, if adopted, will contain the growth of universal service fees they pay each month (currently at 11.7%). Without reform, the assessment on all telecom users will continue to increase.

As members of the Joint Board clearly state, the Recommended Decision to establish an emergency interim cap on CETC high-cost funding is necessary for the preservation and promotion of the universal service program itself. The status quo cannot be sustained. Preserving the status quo will neither serve the immediate interests of consumers nor address the challenge of reforming the universal service program to enable greater broadband deployment or to promote the social, economic, and educational benefits that universal service brings to all consumers. Continued hemorrhaging of the high cost fund threatens the sustainability of universal service.

The Joint Board's recommended decision is designed to bring long-term vitality of the fund and to maintain the fundamental purpose of universal service. We should not let short term interests of a few threaten the widespread long term benefits that the universal service can bring to investment in the nation's telecom infrastructure.

Respectfully submitted,

/s/

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